

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-
Defendant

v.

APPLE, INC.,

Defendant,
Counterclaimant.

Case No. 4:20-CV-05640-YGR

DECLARATION OF CYNTHIA WILLIAMS
IN SUPPORT OF NON-PARTY MICROSOFT
CORPORATION'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF TRIAL
EXHIBITS

I, Cynthia Williams, declare as follows:

1. I am currently the VP Ecosystem Commercial, Gaming at Microsoft Corporation.

The facts stated in this declaration are based on my own personal knowledge and, if called as a witness, I could and would testify to those facts.

2. In my current role at Microsoft, I am responsible for commercial partnerships that bring gaming content to Xbox. I have been employed with Microsoft since August 2018. Based on my work experience, I am familiar with Microsoft's business strategies, sales data, and licensing practices as it relates to Xbox. Microsoft keeps such information confidential to protect itself and its partners from potential harm.

3. I understand that Epic Games, Inc. intends to submit the documents designated PX-2475 and PX-2476 that contain Microsoft confidential information as trial exhibits in the above-captioned legal case, and that Apple, Inc. intends to submit versions of the same documents designated DX-5521 and DX-5522, respectively, as trial exhibits. I further understand Apple, Inc. intends to submit DX-3437, DX-3587, and DX-3764 as trial exhibits. I also understand Microsoft is concurrently filing a motion to seal portions of PX-2475, PX-2476, DX-5521, DX-5522, DX-3437, DX-3587, DX-3764 and other potential trial exhibits, and I make this declaration in support of that motion. I further understand that Microsoft is filing a highlighted

1 and sealed copies of the potential trial exhibits as part of its motion to seal. I have reviewed the
2 documents designated PX-2475, PX-2476, DX-5521, DX-5522, DX-3437, DX-3587, and DX-
3 3764 and explain below why the highlighted portions of the documents contain sensitive and
4 highly confidential information that would potentially cause serious harm to Microsoft if publicly
5 released.

6 4. I have reviewed the documents designated PX-2475 and DX-5521, attached hereto
7 as Exhibit A, which are documents entitled “Gaming Content & Platform Partnerships Deep
8 Dive,” and the documents designated PX-2476 and DX-5522, attached hereto as Exhibit B, which
9 are documents entitled “GGPD Portfolio Team Executive Portfolio Update.” I have reviewed the
10 documents DX-3437 and DX-3587, attached hereto as Exhibit C and D, respectively, which are
11 copies of Microsoft’s Independent Developers Publishing Program on Xbox One Title Licensing
12 Agreement (“TLA”) with Epic Games. I have also reviewed DX-3764, attached hereto as Exhibit
13 E, Amendment #1 to the TLA (“TLA Amendment”) with Epic. Microsoft treats the information
14 contained in PX-2475, PX-2476, DX-5521, DX-5522, DX-3437, DX-3587, and DX-3764
15 sensitively, and only discloses it to a select group of individuals on a need-to-know basis.

16 **PX-2475 and DX-5521: “Gaming Content & Platform Partnerships Deep Dive”**

17 5. The highlighted portions of PX-2475 and DX-5521 in the versions filed under seal
18 are confidential to Microsoft and would result in harm if publicly disclosed. The document
19 contains Xbox’s business strategy, market strategy, agreement terms, strategic initiatives and
20 contains highly sensitive information subject to non-disclosure agreements with third parties.
21 Such information is highly sensitive and commercially valuable to Microsoft’s competitors, as it
22 reflects current business strategy and future plans. If developers or competitors were to obtain
23 such information, it would disrupt negotiations with developers and provide valuable strategic
24 information to competitors that could be used to undercut Microsoft position in the gaming
25 industry.

26 6. The highlighted portion of PX-2475 and DX-5521 at page 5 is confidential and
27 would result in harm if publicly disclosed. The highlighted information explains Microsoft’s
28 future strategic plan for its Xbox gaming platform and plan for growth in the gaming market with

1 respect to content and distribution. Disclosure would place Microsoft at a competitive
2 disadvantage because competitors would have insight into the future strategy for Xbox and could
3 modify agreements with developers to undercut this strategy.

4 7. The highlighted portions of PX-2475 and DX-5521 at pages 8 and 16 is
5 confidential and would result in harm if publicly disclosed. The highlighted information reveals
6 how Microsoft weighs certain terms in its Platform Agreement's when negotiating with
7 developers. If this information were disclosed to developers, Microsoft would be at a
8 disadvantage in negotiating future agreements because developers could leverage this information
9 to position themselves so that they are primed for more favorable Platform Agreement terms with
10 Microsoft. Competitors could use this information to negotiate terms in their respective
11 agreements with developers that undercut this strategy to make Microsoft's platform attractive to
12 developers.

13 8. The highlighted portions of PX-2475 and DX-5521 at page 9 is confidential and
14 would result in harm if publicly disclosed. The highlighted information reflects the specific
15 gaming developer relationships of strategic importance that the identified Xbox employees
16 manage. Competitors that are interested in certain developers could poach these employees to the
17 detriment of Xbox and its relationship with certain gaming developers.

18 9. The highlighted portions of PX-2475 and DX-5521 at page 10 is confidential and
19 would result in harm if publicly disclosed. The highlighted information reflects Microsoft's
20 current licensing strategy with developer partners for Xbox. If this information were disclosed to
21 developers, Microsoft would be at a disadvantage in negotiating future agreements because
22 developers could leverage this information to position themselves so that they are primed for
23 more favorable licensing terms with Microsoft. Competitors could use this information to
24 negotiate terms in their respective agreements with developers that limit or undercut Microsoft's
25 strategy to make the Xbox platform attractive to developers.

26 10. The highlighted portions of PX-2475 and DX-5521 at page 11 contain highly
27 sensitive information subject to non-disclosure agreements, the disclosure of which would result
28 in harm if publicly disclosed. The highlighted information on the left of page 11 contains non-

1 public descriptions of Xbox content and game titles that are not yet public. Such information is
2 non-public and subject to non-disclosure agreements. Release of this information would put
3 Microsoft at a competitive disadvantage because it would provide valuable information to
4 competitors as to which games Microsoft is developing or will be releasing. In the video game
5 industry, timing of the release of games is an important factor in maximizing revenue, and if
6 competitors knew that these projects were ongoing or agreements reached, they could undercut
7 Microsoft and beat them to market with competitive products. The highlighted information on the
8 right of page 11 contain specific licensing terms in third-party agreements and game titles that are
9 not public. If this information were disclosed to developers, Microsoft would be at a disadvantage
10 in negotiating future agreements because developers could leverage this information to procure
11 more favorable licensing terms with Microsoft. Competitors could use this information to
12 negotiate terms in their respective agreements with developers that limit undercut Microsoft's
13 strategy to make the Xbox platform attractive to developers.

14 11. The highlighted portions of PX-2475 and DX-5521 at pages 13 and 14 is
15 confidential and would result in harm if publicly disclosed. The highlighted information contains
16 Microsoft's acquisition strategy, confidential strategic funds, account management strategy which
17 Microsoft uses to gain a competitive advantage in the gaming industry. Competitors could use
18 this information to undercut Microsoft's strategy by using similar strategies to make their
19 platforms more attractive to certain types of Xbox developers.

20 12. The highlighted portions of PX-2475 at page 15 is confidential and would result in
21 harm if publicly disclosed. The highlighted information contains Microsoft's confidential internal
22 engagement and licensing agreement strategy. The information not only describes Microsoft's
23 marketing strategy to attract developer partnerships, it also explains Microsoft's confidential
24 business strategy for acquisition and licensing agreements with certain types of Xbox developers.
25 If Microsoft's competitors were to obtain such information, it would place Microsoft at a
26 competitive disadvantage because Microsoft's competitors could use the marketing, acquisition,
27 and licensing agreement information to identify target developers and undercut Microsoft's
28 confidential strategy in the gaming industry.

1 13. The highlighted portions of PX-2475 and DX-5521 at page 18 is confidential and
2 would result in harm if publicly disclosed. The highlighted information contains confidential and
3 existing and future partnership priorities and identifies terms of non-public licensing agreements.
4 The highlighted information further contains internal strategic assessments of partners, which
5 could be used by those partners in future negotiations. If this information were disclosed to
6 developers, Microsoft would be at a disadvantage in negotiating future agreements because
7 developers could leverage this information to procure more favorable licensing terms with
8 Microsoft.

9 14. The highlighted portions of PX-2475 and DX-5521 at page 19 is confidential and
10 would result in harm if publicly disclosed. The highlighted information contains Microsoft's
11 confidential agreement strategy. If Microsoft's competitors were to obtain such information, it
12 would place Microsoft at a competitive disadvantage because Microsoft's competitors could use
13 the licensing agreement information to undercut Microsoft's confidential strategy in the gaming
14 industry.

15 15. The highlighted portions of PX-2475 at page 20 is confidential and would result in
16 harm if publicly disclosed. The highlighted information contains Microsoft's confidential
17 licensing strategy, including specific terms that relate to preferred gaming features. If Microsoft's
18 competitors were to obtain such information, it would place Microsoft at a competitive
19 disadvantage because Microsoft's competitors could use the licensing terms information to
20 undercut Microsoft's confidential strategy in the gaming industry, particularly with respect
21 Microsoft's future platform features.

22 16. The highlighted portions of PX-2475 and DX-5521 at pages 21 and 22 is
23 confidential and would result in harm if publicly disclosed. The highlighted information contains
24 strategic decisions regarding what platform, acquisition, partnership, and licensing agreement
25 strategies Microsoft will or is considering to keep, discard, or obtain. If Microsoft's competitors
26 were to obtain such information, it would place Microsoft at a competitive disadvantage because
27 Microsoft's competitors would have a valuable head start to develop similar initiatives or features
28 to undercut Microsoft's strategic position in the gaming industry.

PX-2476 and DX-5522: “GGPD Portfolio Team Executive Portfolio Update”

17. The highlighted portions of PX-2476 and DX-5522 are also confidential and would result in harm if publicly disclosed. The highlighted information on pages 3, 4, and 7 reflects Xbox’s upcoming game title releases both in terms of volume and on a title-specific basis. The highlighted information also reveals the geographic markets and platforms to which the game titles would be released. When the document was created, Xbox anticipated release of the game titles on the dates, in the geographic markets, and on the platforms that are reflected in the highlighted information. However, as of the date of this declaration, those game titles remain unreleased. Such information is highly sensitive, as it reflects Xbox’s current business strategy and future plans. If Xbox’s competitors were to obtain such information, it would place Xbox at a competitive disadvantage because Xbox’s competitors would time the release of their game titles to undercut Xbox’s sales in specific geographic markets and on specific platforms.

18. The highlighted portion of PX-2476 and DX-5522 at page 6 is also confidential and would result in harm if publicly disclosed. The information reflects Microsoft’s methodology for predicting the specific game titles that Xbox’s competitors will release. If Microsoft’s competitors were to obtain such information, it would place Xbox at a competitive disadvantage because competitors may attempt to use the same methods to predict Xbox’s game title releases and to time their game title releases in a way that undercuts Xbox’s sales.

DX-3437, DX-3587, and DX-3764: Title Licensing Agreement and Amendment

19. The highlighted portion of DX-3437 and DX-3587 are also confidential and would result in harm if publicly disclosed. The highlighted provisions of 2.5.2 of TLA and Schedule A to the TLA reflect Microsoft’s relationship with Epic Games on the availability of content on Xbox. These provisions reflect Microsoft’s strategy with regards to how Microsoft competes for content, and how it differentiates its products from competitors. The highlighted provision in 8.1.2 of the TLA reflects negotiated pricing information specific to Epic, specific to royalties based on the cost of enabling gift cards or other similar purchase instrument purchases.

20. The highlighted portion of DX-3764 is confidential and would result in harm if publicly disclosed. The highlighted provision in Section 3, subsection 5.11(a) of the TLA

1 amendment describes sensitive information, including pricing terms, about our relationship with
2 publishers for the rights to enable players to play their games across Xbox devices.

3 21. These agreements are negotiated agreement with Epic Games, and reflect specific
4 negotiated terms regarding Microsoft's relationship Epic Games. If the highlighted information in
5 the TLA (DX-3437 and DX-3587) or TLA amendment (DX-3764) were revealed, it would give
6 Microsoft's competitors crucial information that would enable them to structure deals to
7 materially disadvantage Microsoft and our player base. Revealing such specific customer
8 information would reveal sensitive information about our relationship with Epic, and would
9 impact our relationships with our other customers.

10
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12 I declare under the penalty of perjury of the laws of the United States of America that the
13 foregoing is true and correct.

14 Executed this 29th day of April 2021 in Kihei, Hawaii.

15
16 
17 CYNTHIA WILLIAMS